(b) treating the resulting stationary phase culture with at least one antibiotic at a concentration and for a time sufficient to kill growing bacteria, and selecting a phenotypically antibiotic-resistant subpopulation;

(ii) incubating a sample of said phenotypically antibiotic resistant subpopulation with at least one test compound or agent; and

(iii) assessing any antibacterial effects against said phenotypically antibiotic resistant subpopulation; and optionally,

(iv) isolating a compound or agent exhibiting antibacterial activity.

Claim 10. (Amended) The method according to claim 9, further comprising the step of amplifying the identified agent or compound.

REMARKS

On page 2 of the Office Action, the Examiner issues a Restriction Requirement under 35 U.S.C. § 121 to one of the inventions of the following groups:

Group I - Claims 1-7, drawn to a method of preparing antibiotic resistant bacteria;

Group II - Claim 8, drawn to antibiotic resistant bacteria;

Group III - Claim 9, drawn to a process for assessing antibacterial activity of a test compound;

Group IV - Claim 10, drawn to a process of making an antibacterial agent by amplification;

Group V - Claim 11, drawn to an antibacterial agent against stationary phase bacteria;

Group VI - Claims 12-15 and 19, drawn to a chemical compound and compositions thereof having antibacterial activity against antibiotic resistant bacteria; and

Group VII - Claims 16-18, drawn to a method of using an antibacterial agent.

The Examiner contends that restriction as between Groups I and II is proper, since the product of Group II can be made by a materially different process than recited in Group I, e.g., by isolation of bacteria from hospital patients having nosocomial infections.

Further, the Examiner states that restriction is proper with respect to Groups II and III, since the product of Group II can be used in a materially different process than Group III, e.g., in a process for obtaining antibodies, or as a host cell in a process involving the use of recombinant DNA or for the production of single cell protein for nutritional supplementation.

Moreover, the Examiner states that restriction is proper with respect to Group IV/V and VII because the product of Groups V and VI can be used in a materially different process

than Group VII, e.g., as a growth promoter in cattle or as a fungicide or insecticide.

In addition, the Examiner states that restriction is proper with respect to Groups IV and V, since the product of Group V can be made by a materially different process than recited in Group IV, e.g., by chemical synthesis or by fermentation with a suitable microorganism.

Accordingly, Applicants hereby elect the invention of Group III, i.e., Claim 9 without traverse and without prejudice to pursue any of the non-elected claims, which are hereby cancelled, in a Divisional Application(s).

The Examiner is invited to contact the undersigned at his Washington telephone number on any questions which might arise.

Respectfully submitted,

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APPENDIX

Marked-up Version of Amended Application

IN THE CLAIMS:

Claims 1, 8 and 11-19 are being cancelled.

The claims are amended as follows:

Claim 2. (Amended) [A] The method as claimed in claim [1] 9, wherein said [antibacterial agent] antibiotic is selected from the group consisting of[:] rifampicin, kanamycin, ampicillin and pyrazinamide.

Claim 3. (Twice Amended) [A] The method as claimed in claim [1] 9, wherein said [antibacterial agent] antibiotic is used at a concentration of 25 to 150μg/ml with bacteria present at a concentration of 10^5 to 10^9 bacteria/ml.

Claim 4. (Twice Amended) [A] The method as claimed in claim [1] 9, wherein said bacteria are selected from the group consisting of *Staphylococcus aureus*, *Escherichia coli*, *Haemophilus influenzae*, *Streptococcus pyogenes*, *Streptococcus gordonii* [or] and *Mycobacterium tuberculosis*.

Claim 5. (Twice Amended) [A] The method as claimed in claim [1] 9, wherein said bacteria are *Mycobacterium tuberculosis* and said [antibacterial agent] antibiotic is rifampicin.

Claim 6. (Twice Amended) [A] The method as claimed in claim [1] 9, wherein said bacteria are *Escherichia coli* and said [antibacterial agent] antibiotic is kanamycin.

Claim 7. (Twice Amended) [A] The method as claimed in claim [1] 9, wherein said bacteria are *Staphylococcus aureus* and said [antibacterial agent] antibiotic is ampicillin.

Claim 9. (Twice Amended) A [process] method for assessing the antibacterial activity of a test compound or agent or for isolating a compound or agent having antibacterial activity against stationary phase bacteria comprising the steps of:

(i) preparing a phenotypically antibiotic-resistant subpopulation of stationary phase bacteria according to the method [defined in claim 1] comprising at least the steps of:

(a) growing a bacterial culture to stationary phase to obtain a stationary phase culture; and

(b) treating the resulting stationary phase culture with at least one antibiotic at a concentration and for a time sufficient to kill growing bacteria, and selecting a phenotypically antibiotic-resistant subpopulation;

(ii) incubating a sample of said phenotypically antibiotic resistant subpopulation with [one or more] at least one test [compounds] compound or [agents] agent; and

(iii) assessing any antibacterial effects against said phenotypically antibiotic resistant subpopulation; and optionally

(iv) isolating a compound or agent exhibiting antibacterial activity.

Claim 10. (Amended) [A] The method [process for preparing an agent or compound having antibacterial activity against stationary phase bacteria wherein said agent identified] according to [the process defined in] claim 9, [is amplified] further comprising the step of amplifying the identified agent or compound.